

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patricia Schnupp	Team: Team # 4	CCRB Case #: 201100500	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/20/2010 2:00 PM	Location of Incident: Soho Bloomingdales-504 Broadway	Precinct: 05	18 Mo. SOL 4/20/2012	EO SOL 4/20/2012	
Date/Time CV Reported Fri, 01/07/2011 4:14 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 01/12/2011 3:57 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Andrew Buck	15437	927983	005 PCT
2. POM Robert Zontini	28669	929402	005 PCT
3. POM Cassidy Valitutto	19188	943908	005 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Zontini	Discourtesy: PO Robert Zontini spoke obscenely and rudely to § 87(2)(b)	
B.POM Robert Zontini	Force: PO Robert Zontini used physical force against § 87(2)(b)	
C.POM Robert Zontini	Force: PO Robert Zontini used physical force against § 87(2)(b)	
D.POM Andrew Buck	Force: PO Andrew Buck used physical force against § 87(2)(b)	
E.POM Cassidy Valitutto	Force: PO Cassidy Valitutto used physical force against § 87(2)(b)	

Case Summary

On January 7, 2011 § 87(2)(b) and § 87(2)(b) attorneys at the Manhattan District Attorney's Office who reviewed video of this incident while considering whether to bring charges against § 87(2)(b) called the IAB to file a complaint on behalf of § 87(2)(b) did not witness this incident in person but did see the video footage of § 87(2)(b) arrest. On October 20, 2010 § 87(2)(b) and § 87(2)(b) were arrested for shoplifting inside of Bloomingdale's at 504 Broadway in Manhattan. PO Robert Zontini, PO Cassidy Valitutto and PO Andrew Buck of the 5th Precinct responded to this incident. The following allegations resulted from the officers' actions:

- **Allegation A: Discourtesy:** PO Robert Zontini spoke obscenely and rudely to § 87(2)(b) § 87(2)(g)
- **Allegation B: Force:** PO Robert Zontini used physical force against § 87(2)(b) PO § 87(2)(g)
- **Allegation C: Force:** PO Robert Zontini used physical force against § 87(2)(b)
- **Allegation D: Force:** PO Andrew Buck used physical force against § 87(2)(b)
- **Allegation E: Force:** PO Cassidy Valitutto used physical force against § 87(2)(b) § 87(2)(g)

Results of Investigation

Civilian Statements

Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b).

§ 87(2)(b) was interviewed at the CCRB on February 11, 2011. § 87(2)(b) also provided testimony at § 87(2)(a) Gen. Mun. § 50-h(3) and made statements regarding this incident to medical personnel on § 87(2)(b) (encl. 5A-5D). On October 20, 2010 at approximately noon § 87(2)(b) and § 87(2)(b) went to the Bloomingdale's at 504 Broadway to steal jeans. § 87(2)(b) and § 87(2)(b) picked out pairs of jeans, went to the dressing room, put on the stolen jeans and put their old jeans on over the stolen jeans. Four store security guards stopped § 87(2)(b) and § 87(2)(b) as they attempted to leave and told the boys to follow them upstairs to the security room. The upstairs room (similar in size and layout to a CCRB interview room, approximately 7 feet by 10 feet) is connected to another small room with security cameras. § 87(2)(b) was the head security guard at Bloomingdale's and dealt with § 87(2)(b) and § 87(2)(b) provided his mother's contact information. § 87(2)(b) § 87(2)(b) § 87(2)(b) reached § 87(2)(b) § 87(2)(b) and told her to come pick him up. § 87(2)(b) refused to provide his mother's contact information and § 87(2)(b) told § 87(2)(b) he was going to be arrested. Approximately an hour later three police officers, PO Zontini, PO Buck and PO Valitutto arrived. The officers asked § 87(2)(b) why he wasn't providing his information and he ignored them. One of the officers handcuffed § 87(2)(b) to the chair and the officers walked out into the hallway to view the video monitors. § 87(2)(b) and § 87(2)(b) stayed in the room and cracked jokes about how funny it was that they were caught stealing jeans. PO Zontini came in and said, "Stop being a wiseass." § 87(2)(b) ignored PO Zontini and kept joking. PO Zontini said, "If you're so big why don't you stand up." § 87(2)(b)

stood up and PO Zontini pushed him in the chest with both hands and causing him to fall into the chair. § 87(2)(b) got up and tackled PO Zontini. § 87(2)(b) wrapped his arms around PO Zontini and threw him onto the table and then they fell to the ground. PO Buck punched § 87(2)(b) in the ribs and § 87(2)(b) did not let go. PO Buck and PO Valitutto grabbed § 87(2)(b) by putting their arms around his body in a bear hug and lifted him up. § 87(2)(b) let go of PO Zontini and he was handcuffed. § 87(2)(b) witnessed this incident but was not involved. EMS came for the officers and § 87(2)(b) was taken to § 87(2)(b) Hospital. § 87(2)(b) complained to medical personnel that he was punched by the police during his arrest and that the officers assaulted him because he was “laughing.” (encl. 15H) § 87(2)(b) complained of pain to his left flank, right side and lower back. § 87(2)(b) was diagnosed with a bruised back and bruised ribs.

Witness: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)

§ 87(2)(b) was interviewed at Bloomingdale’s on May 25, 2010 (encl. 7A-7C). On October 20, 2010 at approximately 2:30 p.m. Loss Prevention Detective § 87(2)(b) informed § 87(2)(b) that § 87(2)(b) and § 87(2)(b) were caught stealing jeans. It is Bloomingdale’s policy to not prosecute minors and instead call the guardians and have the minors banned from the store. § 87(2)(b) was able to reach § 87(2)(b) mother but could not reach § 87(2)(b) s mother so the police were called. PO Buck, PO Valitutto and PO Zontini responded. § 87(2)(b) and § 87(2)(b) sat on a bench in the interrogation room. § 87(2)(b) and § 87(2)(b) were laughing and joking about the situation. § 87(2)(b) and the officers were in a room adjacent to the room where § 87(2)(b) and § 87(2)(b) were located. PO Zontini told § 87(2)(b) and § 87(2)(b) that they needed to be quiet. PO Zontini went into the room and made § 87(2)(b) sit in a computer chair across from the bench where § 87(2)(b) sat. § 87(2)(b) and § 87(2)(b) joked that they might get pepper-sprayed. § 87(2)(b) said that they could not be pepper-sprayed. PO Zontini interrupted and asked § 87(2)(b) and § 87(2)(b) where they heard of this no pepper-spraying policy because it was not true and they probably heard it on TV. § 87(2)(b) responded by telling PO Zontini that if he pepper-sprayed § 87(2)(b) then “we are gonna roll.” § 87(2)(b) did not recall if the officers cursed or called § 87(2)(b) a “wiseass.” PO Zontini told § 87(2)(b) to stand up as PO Zontini took off his gun belt and placed it on the floor. § 87(2)(b) complied. PO Zontini went over to § 87(2)(b) and tried to push him onto the ground. § 87(2)(b) pushed PO Zontini and he and PO Zontini wrestled. PO Zontini punched § 87(2)(b) in the ribs. PO Buck and PO Valitutto watched this through the doorway from the adjoining room and entered upon seeing and hearing § 87(2)(b) and PO Zontini struggle. PO Buck and PO Valitutto grabbed § 87(2)(b) by the torso and threw him onto the ground. One of the officers put their knee into § 87(2)(b) back then handcuffed him.

Witness: § 87(2)(b)

- § 87(2)(b) § 87(2)(b) caught § 87(2)(b) and § 87(2)(b) shoplifting jeans on October 20, 2010. § 87(2)(b) § 87(2)(b) also drafted an incident report for Bloomingdale’s on the date of this incident.

The CCRB made extensive attempts to interview § 87(2)(b) in person and over the phone. The CCRB went to Bloomingdale’s on March 22, May 10 and May 25, 2011 to interview § 87(2)(b) and § 87(2)(b) § 87(2)(b) was not there any of these times despite his being aware of the CCRB’s planned visit. The CCRB called Bloomingdale’s on February 15, May 12, 18, and 24, 2011 in an effort to speak with § 87(2)(b) but each time he was not available. The CCRB obtained § 87(2)(b) official incident report in lieu of a interview.

The following is a synopsis of § 87(2)(b) incident report which was written on October 20, 2010 (encl. 6A-6D). § 87(2)(b) brought § 87(2)(b) and § 87(2)(b) up to the security room after he observed them attempt to steal jeans. § 87(2)(b) contacted Loss Prevention Supervisor § 87(2)(b) and they decided to call § 87(2)(b) and § 87(2)(b) mothers since they were minors and the value of the jeans was less than \$500. § 87(2)(b) reached § 87(2)(b) mother, Nisha § 87(2)(b) but was unable to reach § 87(2)(b) s mother so police were called. PO Valitutto, PO Buck and PO Zontini responded. The officers argued and bickered with § 87(2)(b) PO Zontini called § 87(2)(b) a “wiseass.” PO Zontini said that he “would like nothing more than to roll with § 87(2)(b) PO Zontini ordered § 87(2)(b) to stand up then removed his gun belt. PO Zontini then “attacked” § 87(2)(b) pushed PO Zontini across the room. PO Buck and PO Zontini tackled § 87(2)(b) onto the ground. PO Buck punched § 87(2)(b) in the side before PO Valitutto came in and handcuffed § 87(2)(b)

Attempts to Contact Civilians

The CCRB sent § 87(2)(b) letters on January 18 and 26, 2011. These letters were not returned to the agency. The CCRB located a phone number for § 87(2)(b) on January 26, 2011 in the Lexis Nexis database. The CCRB called this number but it was disconnected. On March 17, 2011 the CCRB received a copy of PO Zontini’s memo book, which listed a phone number for § 87(2)(b) s mother. The CCRB called that number and a woman answered. The woman refused to identify herself and claimed there was no one by the name of § 87(2)(b) at that number. As of the writing of this report, § 87(2)(b) had not contacted the CCRB.

Video Footage

There is no audio available on the security footage (encl. 8A-8H). The video footage shows § 87(2)(b) handcuffed, and § 87(2)(b) sitting next to each other on a bench. They appear to be talking to each other and at one point § 87(2)(b) attempted to take the handcuffs off of § 87(2)(b) PO Buck entered and made § 87(2)(b) sit in a computer chair across the room from § 87(2)(b) at 15:10. § 87(2)(b) stood up. At 15:13 on the video, PO Zontini said something, removed his gun belt and walked over to § 87(2)(b) PO Zontini grabbed § 87(2)(b) shoulders and pushed him into the chair. § 87(2)(b) pushed PO Zontini back and they fell into the desk and knocked over the computer monitor. PO Buck entered and grabbed § 87(2)(b) torso. PO Buck punched § 87(2)(b) in the ribs, swept his legs out from underneath him then and pushed § 87(2)(b) onto the floor face first. The officers grappled with § 87(2)(b) arms before PO Valitutto entered and handcuffed him. All force used against § 87(2)(b) ceased once he was handcuffed. Still photographs of the video footage are included in the case file, in addition to the entire video.

NYPD Statements:

Subject Officer: PO ROBERT ZONTINI

- PO Zontini is a § 87(2)(b).

Memo Book

PO Zontini had the following entries in his memo book (encl. 13A-13E):
1515 93Q Back post at 504 Broadway
1630 2 under/back to SH w/ 1 perp to Downtown 2MOS to § 87(2)(b)

OLBS

§ 87(2)(b) was observed by Bloomingdale’s security taking clothes off of a rack and concealing it in a bag before trying to leave the store (encl. 18A-18C). Upon the arrival of the officers § 87(2)(b)

§ 87(2)(b) became belligerent and threatened the police. § 87(2)(b) spit on PO Zontini and resisted arrest, PO Zontini went to the ground with § 87(2)(b). PO Valitutto came in to handcuff § 87(2)(b) and injured his right shoulder. Physical force was used against § 87(2)(b) to overcome assault.

Line of Duty Report

PO Valitutto injured his right shoulder area while restraining § 87(2)(b) who refused to be handcuffed (encl. 17A-17B).

CCRB Testimony

On October 20, 2010 PO Zontini worked with PO Buck and they were assigned to patrol sector E. Both officers were in uniform and assigned to a marked RMP. PO Zontini worked from 7:05 a.m. to 3:35 p.m. PO Zontini was interviewed at the CCRB on June 14, 2011 (encl. 14A-14B). At approximately 3:15 p.m. PO Zontini was on patrol when he heard a radio call for a juvenile being held at Bloomingdale's from PO Valitutto. When PO Zontini arrived there were two juveniles, § 87(2)(b) and § 87(2)(b) being held in a small room upstairs where the security cameras are located. § 87(2)(b) was handcuffed to the bench and § 87(2)(b) sat next to him. PO Buck separated § 87(2)(b) and § 87(2)(b) because they were being loud and boisterous. § 87(2)(b) sat on a computer chair across the room. § 87(2)(b) yelled at the officers, who stood in the doorway of the adjoining room talking to the security officers. § 87(2)(b) cursed at PO Zontini and asked PO Zontini to come into the room and mace him. § 87(2)(b) made this request in a mocking tone. PO Zontini responded to this by removing his gun belt and handing it to PO Buck before he went into the room to speak with § 87(2)(b). PO Zontini removed his gun belt to keep his pepper-spray out of the room. PO Zontini thought the lack of pepper-spray would keep § 87(2)(b) calm. As PO Zontini entered the room, § 87(2)(b) stood up and spit at PO Zontini. When shown the video footage of this incident, PO Zontini was unable to point out when § 87(2)(b) spat on him. § 87(2)(b) pushed PO Zontini in the chest into a filing cabinet causing a computer to fall over. PO Buck entered the room. Both officers wrestled § 87(2)(b) onto the ground. § 87(2)(b) pushed the officers and flailed his arms. At some point PO Valitutto entered and forcibly grabbed § 87(2)(b) arms and handcuffed him. PO Zontini was not sure if he or any other officer punched § 87(2)(b) in the ribs. § 87(2)(b) was charged with shoplifting and resisting arrest. § 87(2)(b) complained of pain to his back and was removed by EMS to § 87(2)(b) Hospital. PO Valitutto sustained an injury to his shoulder and PO Buck sustained an injury to his foot. They both went to § 87(2)(b) Hospital and both went out with line of duty injuries for several days. PO Zontini did not sustain any injuries. PO Zontini did not call § 87(2)(b) a "wiseass" nor did he hear any other officers say that. PO Zontini did not tell § 87(2)(b) to stand up nor did he challenge him to a fight.

Subject Officer: PO ANDREW BUCK

- PO Buck is a § 87(2)(b).

Memo Book

PO Buck had the following entries in his memo book (encl. 11A-11D):
1515 85 Post 1 under 504 Bway
1630 2 under 2 MOS § 87(2)(b) § 87(2)(b)

CCRB Testimony

PO Buck was interviewed by the CCRB on July 15, 2011. On October 20, 2010 PO Buck worked with PO Zontini and was assigned to patrol sector E. Both officers were in uniform and

assigned to a marked RMP (encl.12A-12B). PO Buck worked from 7:05 a.m. to 3:40 p.m. PO Buck was interviewed at the CCRB on July 15, 2011. PO Buck corroborated PO Zontini's testimony regarding this incident with a few notable exceptions. PO Buck did not recall the substance of the conversation between PO Zontini and § 87(2)(b) prior to PO Zontini entering the room. After viewing the video footage, PO Buck acknowledged that PO Zontini handed him his gun belt before going into the room with § 87(2)(b). PO Buck did not recall if PO Zontini said anything to him prior to doing this. PO Buck did not witness § 87(2)(b) spit on PO Zontini but was informed of this later by PO Zontini. PO Buck testified that from his vantage point it appeared that § 87(2)(b) lunged at PO Zontini. However, upon being shown the video footage of this incident PO Buck acknowledged that § 87(2)(b) did not lunge at PO Zontini. PO Buck did not remember if he punched § 87(2)(b) and did not recall if any other officers punched § 87(2)(b). PO Buck did not curse during this incident nor did any other officers. PO Buck injured his back while trying to pull § 87(2)(b) off of PO Zontini and went out line of duty for two weeks.

Witness Officer: PO CASSIDY VALITUTTO

- PO Valitutto is a § 87(2)(b) S.

Memo Book

PO Valitutto had the following memo book entries (encl.9A-9B):

1605 10-12 504 Broadway

1830 escort PO to hospital 2 under back to house

Line of Duty Report

PO Buck injured his lower back, left foot and leg when he fell to the ground while restraining § 87(2)(b) who refused to be handcuffed (encl. 17A-17B).

CCRB Testimony

On October 20, 2010 PO Valitutto was assigned to a foot post on Broadway and Prince Street in Manhattan. PO Valitutto was in uniform and did not have partner. PO Valitutto worked from 12:00 p.m. to 8:35 p.m. PO Valitutto was interviewed at the CCRB on June 16, 2011 (encl.10A-10B). PO Valitutto corroborated PO Zontini's testimony regarding this incident. PO Valitutto heard § 87(2)(b) ask PO Zontini to "mace me" and "hit me with a stick." PO Valitutto acknowledged that PO Zontini removed his gun belt prior to entering the room to speak with § 87(2)(b). PO Valitutto believed this was done in an effort to calm § 87(2)(b) down since he kept referring to PO Zontini's gun belt but PO Zontini did not say this to PO Valitutto. Upon PO Zontini entering the adjoining room without his gun belt, PO Valitutto saw § 87(2)(b) raise his hands in an aggressive manner and cock his head back. He then heard PO Zontini ask § 87(2)(b) why he spat on him. PO Valitutto did not see § 87(2)(b) actually spit on PO Zontini. PO Valitutto was shown the video footage of this incident and was unable to point out when exactly § 87(2)(b) raised his hands in an aggressive manner or when he cocked his head back or when he spat on PO Zontini. Upon viewing the video footage, PO Valitutto acknowledged that he did not actually witness what transpired between PO Zontini and § 87(2)(b) prior to them falling on the ground. PO Valitutto entered the room and knelt on § 87(2)(b) back and grabbed his arms in an effort to subdue him. § 87(2)(b) rolled away from PO Valitutto which caused PO Valitutto to injure his shoulder. PO Valitutto was able to handcuff § 87(2)(b). PO Valitutto went to § 87(2)(b) Hospital for his shoulder strain and was out line of duty for two weeks.

Medical Records

- On October 20, 2010 § 87(2)(b) was taken to § 87(2)(b) Hospital by EMS. § 87(2)(b) was diagnosed with contusions to his rib, back and coccyx and released (encl. 15A-15L).

§ 87(2)(a) Gen. Mun. § 50-h(3)

Status of Civil Proceedings

- § 87(2)(b) filed a Notice of Claim with the City of New York on January 11, 2011, claiming unlawful arrest, false imprisonment, malicious prosecution and excessive force and seeking unspecified damages as redress. A § 87(2)(a) Gen. Mun. § 50-h(3). As of the writing of the report, the civil case is still open and pending.

§ 87(2)(a) 160.50, § 87(2)(c), § 87(2)(b)

Civilian CCRB History (encl. 2A)

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b)

Subject Officers CCRB History (encl. 1A-1C)

- PO Zontini has been a member of the service for 10 years and there are no substantiated CCRB allegations against him.
- PO Buck has been a member of the service for 10 years and there are no substantiated allegations against him.
- PO Valitutto has been a member of the service for 4 years and there are no substantiated allegations against him. PO Valitutto has one open CCRB complaint that is currently pending board review. The case is to be closed as victim uncooperative.

Conclusion

Identification of Subject Officers

- § 87(2)(b) testified that PO Zontini called him a “wiseass” so this allegation is pled against him.
- PO Zontini, PO Buck and PO Valitutto all admitted to using force against § 87(2)(b) during this incident therefore the force allegations are pleaded against each officer.

Investigative Findings and Recommendations

Allegation A - Discourtesy: PO Robert Zontini spoke obscenely and rudely to § 87(2)(b)

§ 87(2)(b) claimed PO Zontini called him a “wiseass.” PO Zontini denied cursing during this incident. PO Valitutto and PO Buck also denied that any officers cursed during this incident. § 87(2)(b) did not remember if the officers cursed during this incident. § 87(2)(b) initially claimed that the officers cursed but did not specify what was said. When asked if PO Zontini called § 87(2)(b) a “wiseass,” § 87(2)(b) agreed. § 87(2)(g)

Allegation B - Force: PO Robert Zontini used physical force against § 87(2)(b)

§ 87(2)(b) claimed that he and PO Zontini were arguing and PO Zontini told him to stand up before he removed his gun belt, entered the room and pushed § 87(2)(b) down. Two independent witnesses, § 87(2)(b) and § 87(2)(b) corroborated § 87(2)(b) version of events. Furthermore, the security footage clearly supports § 87(2)(b) statement regarding the circumstances of his arrest. The footage does not have audio but depicts § 87(2)(b) and PO Zontini engaged in a conversation before PO Zontini removed his gun belt and § 87(2)(b) stood up from his chair. According to the video, § 87(2)(b) stood up in front a computer chair in a non-threatening manner before PO Zontini grabbed § 87(2)(b) by his shoulder and threw him back onto the chair. § 87(2)(b) is not seen spitting on PO Zontini at any point.

According to the NYPD Patrol Guide, officers are only supposed to use “the level of force necessary to overcome resistance” (encl.1) PO Zontini testified that he entered the room where § 87(2)(b) was being held without his gun belt to talk to § 87(2)(b) and calm him down. According to PO Zontini, § 87(2)(b) made statements about PO Zontini using his pepper-spray against him, which is why PO Zontini removed his gun belt before going in to speak with § 87(2)(b) PO Zontini testified he used force against § 87(2)(b) because § 87(2)(b) spat on him as he entered the room and § 87(2)(b) was going to be arrested for assault. PO Zontini, however, could not indicate where in the video § 87(2)(b) allegedly spat on him. PO Buck and PO Valitutto denied that PO Zontini told § 87(2)(b) to stand up and they did not see § 87(2)(b) spit on PO Zontini. PO Buck initially testified that § 87(2)(b) lunged at PO Zontini, and PO Valitutto testified that § 87(2)(b) threw his hands up in a threatening manner. However, both officers viewed the video footage of this incident and conceded that their initial testimony was inaccurate. PO Buck and PO Valitutto’s initial inaccurate testimony indicates that they were both aware that what transpired between PO Zontini and § 87(2)(b) was not appropriate. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation C - Force: PO Robert Zontini used physical force against § 87(2)(b)

Allegation D - Force: PO Andrew Buck used physical force against § 87(2)(b)

Allegation E - PO Cassidy Valitutto used physical force against § 87(2)(b)

§ 87(2)(b) admitted that after PO Zontini pushed him he fought back and all of the officers admitted to using force against § 87(2)(b) after he started wrestling with PO Zontini. What happened after § 87(2)(b) began to fight back with PO Zontini is not disputed and is supported by the video footage. The video shows § 87(2)(b) aggressively fighting back. § 87(2)(b) pushed PO Zontini into a computer desk which caused the computer to fall to the ground. Once § 87(2)(b) started fighting back it was hard for the officers to get control of him. According to the video, PO Buck and PO Zontini tackled § 87(2)(b) to the floor but were still unable to handcuff § 87(2)(b) because he was rolling around. PO Valitutto entered the room and the officers were still unable to handcuff § 87(2)(b) After PO Valitutto entered, one of the officers, it is unclear whom, punched § 87(2)(b) on his side. Once § 87(2)(b) was punched he stopped resisting and he was handcuffed. Once § 87(2)(b) was handcuffed no further force was used against him. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Team: _____

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Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date